

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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OCT 19 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
800 Data Base Access Tariffs and) CC Docket No. 93-129
the 800 Service Management System)
Tariff)

REPLY OF U S WEST COMMUNICATIONS, INC.

U S WEST Communications, Inc. ("U S WEST"), through counsel, hereby submits its reply to various comments and oppositions relating to the U S WEST Contingent Petition for Waiver, filed September 17, 1993, in the above-captioned proceeding.¹

U S WEST requested that the requirement of Footnote 24 of the Order Designating Issues for Investigation² be waived to permit U S WEST to file its proprietary Switching Cost Model ("SCM") and proprietary vendor switch data on a confidential basis. U S WEST had earlier filed a Petition for Clarification or, in the Alternative, Reconsideration³ of this requirement, but this Petition had not yet been acted upon.

¹Comments and oppositions were filed herein on Oct. 12, 1993, by Sprint Communications Company LP ("Sprint"); Allnet Communication Services, Inc. ("Allnet"); Ad Hoc Telecommunications Users Committee; National Data Corporation ("National Data"); Northern Telecom Inc.; Cincinnati Bell Telephone Company; and MCI Telecommunications Corporation ("MCI").

²See In the Matter of 800 Data Base Access Tariffs and the 800 Service Management System Tariff, Order Designating Issues for Investigation, 8 FCC Rcd. 5132 (1993) ("Order").

³See U S WEST's Petition for Clarification or, in the Alternative, Reconsideration, filed herein Aug. 18, 1993, ("Petition").

Most commentators in opposition assert that U S WEST had not really been required to file either the SCM or the proprietary vendor data on the public record.⁴ Rather, they point out that the Order required only that the model and proprietary data be released if a carrier chose to rely on the model's outputs in defending its tariffs.⁵ They further contend that parties filing comments in a tariff proceeding have a right to review underlying cost information supporting the tariff,⁶ but, with the single exception of Allnet, agree to review the information subject to various degrees of protection of the proprietary interests implicated by the model and vendor data.⁷ Sprint, recognizing that the issues at stake in this proceeding are likely to be recurring ones, suggests that the Commission

⁴One opposition, filed by Allnet, is so bizarre that it treads perilously close to the type of filing subject to a Motion to Strike under Section 1.52 of the Commission's Rules. Allnet seems to claim that it and the general ratepaying public own the proprietary software developed by U S WEST and others, and that it ought to be given away for free (see Allnet at 2). Allnet also alleges that the equipment vendors whose competitive information Allnet seeks to compromise were only trying to protect this information in order "to please the purchasers of their equipment to aid them in their regulatory causes here" (id. at 2). The U S WEST position is described alternatively as a "scam" and a "coverup," notwithstanding a total absence of evidence of either (id. at 2-3). Allnet also attaches a massive "Vaughn Index" from its unsuccessful litigation concerning the basic SCM model, with no demonstration of how it relates to the SCM SS7 model. Stultiloquence like the Allnet filing does nothing to aid the Federal Communications Commission ("Commission" or "FCC") processes, and ought to be ignored and discouraged.

⁵See, e.g., MCI 1-2; National Data at 2-3.

⁶See, e.g., Sprint at 3; National Data at 4-6.

⁷See, e.g., Sprint at 4; National Data at 7-8.

initiate a general proceeding to examine how to treat confidential tariff support data.⁸

We have several observations:

Initially, U S WEST does not have systems in place to track new service costs such as 800 data base costs on an embedded basis. U S WEST does not track network costs by products, and to do so would require a complete resystemization. In the case of the basic 800 service, such resystemization would be expensive and time consuming (an important factor given the fact that the tariffs are already scheduled to take effect). In the case of the vertical features, such resystemization would not suffice to recapture the historical costs and would be useless.

More significantly, even where historical costs can be tracked and applied to new services, such costs have little to do with actual service costs. Thus, while we agree that, in a regulatory world marked by the separations process, interstate service costs can often have very little relation to real world economics, the forward-looking costs derived from the SCM model are by far the best method of achieving an accurate service cost assessment, particularly in the case of a new service. The SCM model determined service costs on a forward-looking basis, allowing U S WEST to appropriately derive a long-run incremental cost to utilize as a floor for rate-setting purposes. Embedded or historical costs are not nearly as meaningful in setting a price floor, especially in the case of new services.

⁸See Sprint at 5-6.

Thus, in the context of this proceeding, the issue is whether carriers will be permitted to rely on the best possible cost information in deriving and defending their tariff rates. Any FCC action which would compromise U S WEST's proprietary SCM model or the proprietary vendor data would essentially preclude use of this material for tariff purposes, thereby making the tariff process deliberately inaccurate.

In this context, it is important to keep in mind that the tariff process does not, as implied by most of the commenting parties, vest any party with the right to review confidential carrier information. Where confidential information is filed in support of a tariff, it is for the benefit of the Commission, and does not confer "important procedural benefits upon individuals."⁹ In fact, the Commission is not compelled to require cost support in any event.¹⁰ As competition continues to grow in the markets served by exchange carriers,¹¹ more and more carrier tariffs, if required to be cost supported, will be

⁹In the Matter of Amendment of Section 61.38 of the Commission's Rules, 94 FCC 2d 1107, 1109 (1983), citing Aeronautical Radio, Inc. v. FCC, 642 F.2d 1221, 1235 (D.C. Cir. 1980), quoting American Farm Lines v. Black Ball Freight Service, 397 U.S. 532, 538 (1970). See also In the Matter of AT&T Communications Tariff FCC Nos. 9, 10 and 11, 103 FCC 2d 77, 93 n.29 (1985).

¹⁰See National Rural Telecom Ass'n v. FCC, 988 F.2d 174 (D.C. Cir. 1993).

¹¹See Expanded Interconnection with Local Telephone Company Facilities, Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd. 7369 (1992), appeals pending sub nom. Bell Atlantic Tel. Cos. v. FCC, No. 92-1619 (D.C. Cir. pet. for rev. filed Nov. 25, 1992).

based upon information which would cause serious competitive harm if obtained by competitors.

In other words, the Commission must realize that, however salutary its idea of fully open tariff proceedings might be, in a competitive world such an idea would do nothing more than impede competition by compromising sensitive business information of those carriers still required to file tariffs with cost support. We submit that the best approach is to recognize that detailed cost support for tariffs is simply an anomaly in today's world and to take action to reduce cost support requirements for all carriers. This is especially true with emerging technology and multiple new services that would utilize an SCM model. In the alternative, to the extent the Commission wants filed cost data to be reasonably accurate, it must be prepared to protect the confidential nature of such information. The procedures suggested by Bell Communications Research, Inc., and the

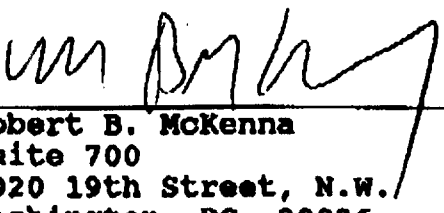
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participating Bell Operating Companies¹² in their own Petition for Waiver are acceptable to U S WEST.

Respectfully submitted,

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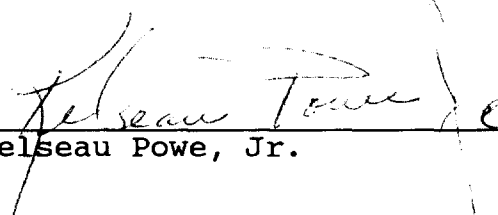
Of Counsel,
Laurie J. Bennett

October 19, 1993

¹²See Petition for Waiver filed herein Sept. 16, 1993, by Attorneys for the participating Bell Operating Companies, Cincinnati Bell, Inc., and Southern New England Telephone Company.

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 19th day of October, 1993, I have caused a copy of the foregoing **REPLY OF U S WEST COMMUNICATIONS, INC.**, to be served via first-class United States Mail, postage prepaid, upon the persons listed on the attached service list.



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